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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 20, 2002

APPLICATION OF

UAE MECKLENBURG COGENERATION LP

CASE NO. PUE-2002-
00313

For a certificate of public
convenience and necessity pursuant to
Va. Code § 56-580 D

FINAL ORDER

On May 28, 2002, UAE Mecklenburg Cogeneration LP ("UAE Mecklenburg" or "Company") filed with the State Corporation Commission ("Commission") a Petition and Application ("May 28, 2002, Filing") requesting that the Commission declare that its facility located near Clarksville, in Mecklenburg County, Virginia ("Facility") may cease operation as a qualifying cogeneration facility ("QF") under the federal Public Utilities Regulatory Policies Act ("PURPA")¹ and commence operation as a non-qualifying electric generating facility without obtaining a certificate of public convenience and necessity ("CPCN" or "certificate") or other approvals from the Commission. In the alternative, UAE Mecklenburg also proposed in its May 28, 2002, Filing that if the Commission found that a certificate or other approvals are needed, the

¹ 16 U.S.C. § 2601 et seq.

Company's filing be treated as an application for a CPCN or for such other approvals as may be required.

Thereafter, on July 3, 2002, UAE Mecklenburg filed an application for a CPCN ("Application") pursuant to § 56-580 D of the Code of Virginia ("Code") to operate its Facility as a merchant plant. The Company further requested therein that the Commission consider the new Application as replacing the Company's May 28, 2002, Filing in its entirety. In the alternative, the Company asked that the Commission treat its Application as an amendment to the May 28, 2002, Filing.

UAE Mecklenburg states in its Application that it is applying for a certificate pursuant to 5 VAC 5-20-80 A of the Commission's Rules of Practice and Procedure and to the extent applicable, the merchant plant rules, 20 VAC 5-302-10 et seq. According to the Application, UAE Mecklenburg owns and operates the Facility and is a limited partnership owned by one general partner, Mecklenburg Cogenco, Inc., and one limited partner, Cogeneration Capital Corp., both of which are wholly-owned subsidiaries of United American Energy Corp. ("UAE"). UAE is a privately-held energy company that owns or controls 722 MW of generating capacity. The Application also indicates that the Facility has operated as a QF pursuant to PURPA since November 1992, and that the Federal Energy Regulatory Commission ("FERC") has determined UAE Mecklenburg

to be an exempt wholesale generator under the federal Public Utility Holding Company Act.² The Company indicates that on May 24, 2002, UAE Mecklenburg filed with the FERC a request for blanket, market-based pricing authority pursuant to § 205 of the Federal Power Act.

The Facility is a 132 MW (net) topping-cycle pulverized coal cogeneration facility consisting of two power generation units. According to the Application, UAE Mecklenburg has obtained and maintains all necessary local zoning approvals and environmental permits. The Application states that UAE Mecklenburg is one of the cleanest coal-fired plants in the Commonwealth, utilizing state-of-the-art emission controls on each of its units. According to the Company, the Facility is interconnected to the system of Virginia Electric and Power Company ("Dominion Virginia Power") at the Buggs Island non-utility generator substation. The Application also states that Dominion Virginia Power conducted an electric transmission interconnection study in May 1991. That study concluded that no additional system modifications or line reconductoring were required to support the interconnection. UAE Mecklenburg currently sells all of the electric capacity and energy from the Facility exclusively to Dominion Virginia Power pursuant to a Power Purchase and Operating Agreement

² 15 U.S.C. § 79a et seq.

("PPA") effective as of January 17, 1989. The PPA has an initial 25-year term, which may be extended for periods of up to five years each. According to the Application, the PPA recognizes that UAE Mecklenburg may operate the Facility as a QF or a non-QF.

The Company requests in its Application that the Commission issue an order granting UAE Mecklenburg (i) a certificate to operate the Facility, (ii) with respect to information not furnished in the Company's Application and supporting documents, a waiver of filing requirements therefor pursuant to 20 VAC 5-302-40, and (iii) such other authority, approvals and relief as may be deemed proper under the circumstances.

In support of its Application for a certificate, the Company represents, among other things, that the Facility has been fully operational for more than nine years. The Application further states that the Facility has promoted and will continue to promote the public interest by (i) enhancing electric service reliability, (ii) adding to the diversity of energy sources within the Commonwealth, (iii) providing economic benefits to the Commonwealth of Virginia and Mecklenburg County, (iv) enhancing the competitive market for wholesale electricity, and (v) providing wholesale electricity

and generating capacity needed by Dominion Virginia Power to serve its retail customers.

The Company further indicates in its Application that its steam host, Burlington Industries, Inc. ("Burlington"), has filed for bankruptcy protection and that it is anticipated that Burlington will close its facility in Clarksville by the end of the third quarter of 2002. The Company states that it has proposed developing a water distillation plant to maintain its QF status, but would prefer to avoid the significant expenditures and commitments associated with that plant, which the Company states will not be needed if the Commission issues a certificate to the Facility. Thus, the Company states that the public interest will be served if the Commission considers this Application on an expedited basis, and without the necessity of a public hearing.

On July 24, 2002, the Commission issued an Order for Notice and Comment that, among other things: (1) docketed this proceeding; (2) granted UAE Mecklenburg's request to have its July 3, 2002, Application replace its May 28, 2002, Filing in its entirety; (3) required Mecklenburg to provide public notice of its Application; (4) established a procedural schedule permitting interested persons and Commission Staff ("Staff") to submit written comments and requests for hearing; (5) permitted the Company to submit a response; and (6) noted

that such comments may also address (i) the Commission's authority to issue a certificate in this case, and (ii) the Commission's discharge of its review obligations in this matter pursuant to § 56-46.1 of the Code, as required by § 56-580 D.

On August 21, 2002, the Department of Environmental Quality ("DEQ") filed a report on the Application. The DEQ's report addresses the status of the Company's compliance, as a permit holder, with applicable permits previously issued to the plant. The DEQ concludes that the Company is in compliance with the water and air permits that have been issued by the DEQ. In addition, the DEQ recommends that the plant should maintain compliance with its existing permits and zoning authorization and should notify the DEQ of any operational changes that would or might require amendment of any applicable permits pertaining to air, water, waste, or petroleum tanks.

Staff filed comments on August 30, 2002. Staff recommends that the certification sought by the Company be granted. Staff concludes that the statutory requirements of § 56-580 D of the Code and the Commission's merchant plant rules have been satisfied. Staff also explains that the DEQ's report does not identify any environmental issues that are not otherwise addressed in the facility's existing permits or

approvals. Staff also reviewed the impact on reliability, UAE Mecklenburg's technical and financial ability to operate the facility, economic impacts, and the public interest. In addition, Staff concludes that, under Virginia law, UAE Mecklenburg cannot begin operations as a non-QF without obtaining a certificate from this Commission.

On September 4, 2002, the Company filed a Response and Request for Approval and Expedited Consideration. UAE Mecklenburg states, among other things, that: (1) there are no material facts in dispute; (2) no party has requested a hearing or filed comments in opposition to the Application; (3) the Company has satisfied the requirements for issuance of a certificate; (4) UAE Mecklenburg has not requested the Commission to determine whether a certificate is required under the circumstances in this case; and (5) the Company must initiate construction and incur substantial expenditures to assure continued operation as a QF if the Commission does not issue a final order in this case before September 27, 2002. In addition, the Company did not object to any part of the DEQ's report.

NOW THE COMMISSION, having considered the pleadings and the applicable law, is of the opinion and finds as follows.

As set forth in prior orders,³ the Code of Virginia establishes six general criteria, or areas of analysis, that apply to the Commission's review of applications under § 56-580 D of the Code. The six criteria are as follows:

(1) reliability;⁴ (2) competition;⁵ (3) rates;⁶ (4) environment;⁷ (5) economic development;⁸ and (6) public interest.⁹ We have evaluated these six areas.

Pursuant to § 56-580 D of the Code, we find that the proposed facilities: (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility; and (ii) are not otherwise contrary to the public interest. We have evaluated the application pursuant to § 56-46.1 of the Code and have given consideration to the

³ See, e.g., Application of Tenaska Virginia Partners, LP, For approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work, Case No. PUE-2001-00039, Final Order (April 19, 2002).

⁴ Va. Code Ann. §§ 56-580 D(i) and 56-46.1 A.

⁵ Va. Code Ann. § 56-596 A.

⁶ Va. Code Ann. § 56-580 D(ii); 20 VAC 5-302-20 14. See also Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities, Case Nos. PUE-2001-00313 and PUE-2001-00665, Order Adopting Rules and Prescribing Additional Notice at 6 (Dec. 14, 2001).

⁷ Va. Code Ann. §§ 56-580 D and 56-46.1 A. This includes scenic assets and historic districts.

⁸ Va. Code Ann. §§ 56-46.1 and 56-596 A.

⁹ Va. Code Ann. § 56-580 D(ii).

effect of the proposed facilities on the environment.

Amendments to §§ 56-580 D and 56-46.1 A that became effective July 1, 2002, provide, among other things, that permits regulating environmental impact and mitigation of adverse environmental impact shall be deemed to satisfy the requirements of such section with respect to all matters that are governed by the permit.

In this regard, the DEQ concludes that the Company is in compliance with the water and air permits that have been issued by the DEQ. The DEQ's report does not identify any environmental issues that are not otherwise addressed in the facility's existing permits or approvals. In addition, the DEQ recommends that the facility: (1) maintain compliance with its existing permits and zoning authorization; and (2) notify the DEQ of any operational changes that would or might require amendment of any applicable permits pertaining to air, water, waste, or petroleum tanks. As a condition of the certificate granted herein, we require the Company to comply with this recommendation. No other environmental issues were raised in this proceeding.

Finally, we agree with UAE Mecklenburg that the Commission does not need to determine whether the Company could have ceased operation as a QF, and commenced operations as a non-QF, without obtaining a certificate from this

Commission.¹⁰ Rather, we find herein that UAE Mecklenburg has satisfied the statutory requirements of § 56-580 D of the Code and will be granted a certificate as requested.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-580 D of the Code of Virginia, UAE Mecklenburg is hereby granted authority, and a certificate of public convenience and necessity, to operate an electric generation facility in Mecklenburg County, Virginia, as described in this proceeding.

(2) The certificate of public convenience and necessity granted herein shall be conditioned upon UAE Mecklenburg:

(a) maintaining compliance with its existing permits and zoning authorization; and (b) notifying the Department of Environmental Quality of any operational changes that would or might require amendment of any applicable permits pertaining to air, water, waste, or petroleum tanks.

(3) There being nothing further to come before the Commission in this proceeding, this case shall be removed from

¹⁰ See, e.g., Application of Doswell Limited Partnership, For prior approval of acquisition and disposition of control of a public utility, Order Granting Approval, Case No. PUA-1996-00083 (Dec. 20, 1996).

the docket and the papers transferred to the file for ended causes.